

PART 2051 - HOURS AND PAY

Subpart H - Overtime Provisions of Title 5, United States Code,
and the Fair Labor Standards Act.

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PART 2051 - HOURS AND PAY

Subpart H - Overtime Provisions of Title 5, United States Code,
and the Fair Labor Standards Act.

§2051.351 General.

This subpart contains instructions for administering the two overtime laws that apply to FmHA employees. The first is section 5542 of Title 5, United States Code, which will be referred to as "Title 5." The second is the Fair Labor Standards Act which is commonly known as the FLSA. The instructions for administering Title 5 are contained in §2051.360 of this subpart. The instructions for administering the FLSA are contained in §2051.370 of this subpart.

§2051.352 Relationship of the FLSA to Title 5.

(a) Title 5 overtime provisions referred to in this subpart are the general overtime provisions which apply to all General Schedule (GS) employees. Under these provisions, employees are entitled to overtime compensation for all work in excess of 8 hours a day or 40 hours in a week which management has "officially ordered or approved." This compensation may take the form of overtime pay or compensatory time off in some situations.

(b) The overtime provisions of the FLSA simply require the payment of "time-and-a-half" for all hours of work over 40 hours in a workweek. Since Title 5 also contains a 1-1/2 payment provision for work over 40 hours, the overtime entitlements under either law are quite often identical. There are important differences, however, between these two overtime laws which can result in an employee being entitled to different overtime entitlements under each law for a given workweek. There are three key differences between the FLSA and Title 5:

(1) The FLSA defines "hours of work" differently, meaning that the number of overtime hours under each law can vary for the same workweek;

(2) The FLSA does not require that overtime work be "officially ordered or approved;" and

(3) The FLSA has different rules for computing the overtime rate of pay.

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(c) The FLSA is a legal minimum standard. Therefore, whenever the above differences result in a greater overtime entitlement under the FLSA, the law requires that the employee be paid overtime under the FLSA. However, whenever the overtime entitlement of Title 5 is equal to, or greater than, the FLSA, the employee is entitled to Title 5 overtime payment.

(d) The payroll system of the National Finance Center (NFC) is designed to compute an employee's overtime entitlement under each law and pay under whichever law provides the greater benefit. The payroll system automatically takes into account the different computational rules for the overtime rates under each law. Therefore, it is not necessary to be familiar with the overtime rate computation rules of the FLSA in order to complete the Form AD-321-3, "Time and Attendance Report," properly.

(e) In order for the NFC to compute the proper overtime entitlements for FmHA employees, the correct number of hours of work under each law must be provided. It is essential, therefore, that FmHA personnel responsible for completing the Form AD-321-3 know how to report overtime hours under each law. These instructions are contained in §2051.361(c) and 2051.370(e) of this subpart.

(f) If a supervisor is not familiar with the FLSA rules for "suffering or permitting" hours of work, it is possible that FmHA can incur an obligation to make FLSA overtime payments despite the fact that no overtime has been officially ordered or approved. Therefore, FmHA supervisors and managers must be aware of the "suffer or permit" concept under the FLSA which is explained in detail in §2051.370(g) of this subpart.

§2051.353 - 2051.359 [Reserved]

§2051.360 Overtime provisions of Title 5.

This section contains the instructions for administering the overtime provisions of Title 5 by the FmHA.

(a) Overtime entitlement. Title 5 requires that employees receive overtime compensation for all officially ordered or approved hours of work in excess of 8 hours in a day or 40 hours in an administrative workweek. The administrative workweek at FmHA is Sunday through Saturday. For a full-time employee with a 40 hour basic workweek, all officially ordered or approved work outside the basic workweek and/or compressed work schedule is normally overtime work.

(b) Approving overtime work.

(1) Authority to officially order or approve overtime. The Administrator, Associate Administrator, Deputy Administrator Program Operations, Deputy Administrator for Management, Assistant Administrator for Finance Office, as well as Assistant Administrators or designated officials acting in these positions, can order or approve overtime work. (See Exhibit C.) This authority may be redelegated under the following provisions: (Revised 5-18-88, PN 85)

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(i) National Office - If redelegated, Division Directors may approve overtime within funds allocated for this purpose. They have the responsibility to monitor and administer their overtime allowances properly and effectively in accordance with work requirements. This includes approving overtime for nonexempt FLSA employees on an individual request basis.

(ii) State Office - State Directors may approve overtime within amounts allocated in their annual operating budget for this purpose. Any requests exceeding allocation must be approved by the National Office through the Budget Division. State Directors may further redelegate authorization to approve overtime to District Directors.

(2) Authority to approve overtime for Emergency loan activities. State Directors may order or approve overtime work for employees in Emergency loan activities, in authorized disaster areas, on a short-term basis pending approval of allocations.

(3) Policy for requesting overtime work. Keep overtime to a minimum. Limit requests for overtime work to critical situations during which overtime is the only possible solution for completing essential work.

All overtime within allocations must be ordered or approved by an authorized official in advance of the work. Send requests for overtime approval, other than those in paragraph (b)(1) of this section, to the National Office Budget Division. Use the administrative channels and procedures specified in paragraph (b)(5) of this section.

(4) Policy for reporting overtime work. The Budget Division will submit to the Assistant Deputy Administrator for Automated Systems Development and Assistant Administrators a quarterly report by organization on the use of overtime.

(5) Procedures for requesting approved overtime work. Procedures should be developed to document the request and approval of overtime. Form RD 2051-6, "Request for Overtime," may be used for this purpose, or such other procedures as determined by officials having delegated approval authority. Each request should include a justification for the overtime work. If the requested overtime covers more than one pay period, separate requests should be made. The request(s) shall be made through the following channels:

(i) Field employees.

(A) County level - the supervisor should request approval from the District Director.

(B) District level - If within District's overtime allowance, the District Director approves the request; if not, the request is referred to the State Office for approval. Documentation of the request and approval should be made at each level and a notation placed in the requesting unit's T&A file record. If Form RD 2051-6 is used, the approving official should retain a copy for record purposes, and return a copy to the requesting unit for the T&A file record.

(ii) National Office Employees. Supervisors should request approval of overtime from Division Directors. If the request is not within the Division's overtime allocation, the request should be referred to the appropriate Assistant Administrator and/or Deputy Administrator for approval. Documentation of the request and approval should be made at each level and a notation placed in the requesting unit's T&A file record. If Form RD 2051-6 is used, the approving official should retain a copy for record purposes, and return a copy to the requesting unit for the T&A file record.

§2051.361 Crediting Title 5 overtime.

(a) General. Title 5 provides overtime compensation for officially ordered or approved overtime work in excess of 8 hours a day or 40 hours a week. Authorized paid leave and compensatory time off within the employee's regularly scheduled administrative workweek are credited towards the 8 hours per day or 40 hours per week basic work requirement.

(b) Travel. Title 5 generally prohibits overtime pay for travel away from the employee's official duty station. There are some very limited exceptions to this prohibition, only one of which would apply to FmHA. This exception applies only when an employee's travel results from an event which cannot be scheduled or controlled administratively by the Government. This exception is not applicable when the event is not within the control of FmHA but can be scheduled or controlled administratively by another Government agency. If an unusual situation arises which appears to meet this exception, consult with the National Office before approving overtime for the travel involved. Ordered and approved travel that meets this exception should be recorded on the T&A under Code 24.

(c) Recording overtime work under Title 5. The procedures for recording overtime work are contained in the NFC's Mode T&A Handbook. It is important that these instructions be followed carefully to insure

proper payment under Title 5 and the FLSA. Record all Title 5 overtime, regardless of whether the employee will be paid overtime under Title 5 or the FLSA. The payroll system must have accurate information for creditable overtime under each law so that a correct comparison of the respective overtime entitlements can be made under the payroll system and so that the employee may be paid the higher of the two amounts to which entitled.

§2051.362 Overtime compensation. (Revised 11-13-85, PN 985.)

(a) Overtime pay. Under Title 5 the hourly overtime rate of pay for an employee is 1-1/2 times their basic hourly rate. For an employee whose basic rate of pay exceeds the minimum rate of GS-10, the overtime is limited to 1-1/2 times the minimum rate of grade GS-10. In addition, an employee's regular and premium Pay under Title 5 for a pay period may not exceed the rate of a grade GS-15, step 10 for a Pay period. This limitation is called the Maximum Earnings Limitation (MEL). Under FLSA the hourly overtime rate of pay for an employee is 1-1/2 times the hourly regular rate of pay. The computation of an employee's hourly regular rate of pay under FLSA is affected by Cost of Living Allowances (additional salary for high-cost living areas), Night Differential (10 per cent of base salary differential for regularly scheduled work between the hours of 6 p.m. and 6 a.m.), or Sunday Differential (25 percent of base salary differential for regularly scheduled Sunday work which is not overtime and not in excess of 8 hours.) This can affect which statute the overtime is paid under and whether a nonexempt employee may be granted compensatory time (see §2051.362) (b) (2) of this subpart.) Employees covered by FLSA are not subject to the hourly rate limitation of 1-1/2 times GS-10, step 1 or the MEL.

(b) Compensatory time off. Under the following conditions, an employee may earn compensatory time off for an equal amount of overtime work. Compensatory time off is given in lieu of overtime pay.

(1) Employees who are exempt from the FLSA may be granted compensatory time off (See §2051.370(c) of this subpart):

(2) Nonexempt employees who earn their overtime pay entitlement solely under FLSA must be paid. When overtime is earned under both Title 5 and FLSA, they will not earn, or be allowed to take, compensatory time off when the overtime pay entitlement is greater under FLSA. When the overtime pay entitlement is the same or greater under Title 5, compensatory time may be earned by, and granted to, a nonexempt employee the same as for an exempt employee, provided that the employee requests compensatory time by the conclusion of the pay period in which the overtime is earned. Typically, the computations for overtime earned under Title 5 and FLSA are identical; however, Cost of Living Allowances, Night Differential, or Sunday Differential will affect the FLSA computation and make it higher than the Title 5 computation (See example 2). Supervisors should also note that

in cases where the nonexempt employee's rate of basic pay exceeds step 1 of GS-10, the FLSA computation will always be higher. When a supervisor questions whether it is appropriate to grant compensatory time based on the computations, he/she should contact the servicing Personnel Management Specialist or Administrative Officer for guidance. (Revised 11-13-85, PN 985.)

EXAMPLE 1

A nonexempt GS-7 employee is authorized to work 8 hours of overtime on Saturday after actually working 40 hours during the regular workweek. Since the overtime is authorized and the employee actually works 48 hours, the employee is eligible for overtime pay under both Title 5 and FLSA. In order to determine whether the employee may be granted compensatory time, computations must be done under both Statutes to determine which computation will provide the highest rate of pay.

Computation under FLSA for 48 hours of actual work:

$$\begin{array}{r} \$7.96 \times 48 = \$382.08 \text{ Straight time pay for all hours} \\ \text{worked} \end{array}$$

$$\text{Total} = \$382.08 \div 48 = \$7.96 \text{ Regular Rate}$$

$$+ 1/2 \times \$7.96 \times 8 \text{ OT} = \underline{\$ 31.84}$$

$$\$413.92$$

Computation under Title 5:

$$\$7.96 \times 40 = \$318.40 \text{ Basic Pay}$$

$$\$11.94 \times 8 = \underline{+ 95.52} \text{ Overtime}$$

$$\$413.92$$

The computation under Title 5 is equal to the computation under FLSA; therefore, the employee may be granted compensatory time for the overtime worked.

NOTE: An employee who receives compensatory time for time worked under FLSA cannot forfeit that compensatory time. He/she must either be paid or granted the compensatory time.

EXAMPLE 2

A nonexempt GS-7 employee is authorized in advance to work 8 hours of overtime on Saturday after actually working 40 hours during the

regular workweek. The employee is located in an area which has a Cost of Living Allowance (COLA) of 10%. Since the overtime is authorized and the employee actually works 48 hours, he/she is eligible for overtime pay under both Title 5 and FLSA. To determine if the employee may be granted compensatory time, the computations under both statutes must be compared. Computation under FLSA for 48 hours of actual work:

$$\begin{aligned} \$7.96 \times 48 &= \$382.08 \\ .80 \times 40 &= + \underline{32.00} \text{ COLA} \end{aligned}$$

$$\text{Total} = \$414.08 \div 48 = \$8.63 \text{ Regular Rate}$$

$$+1/2 \times \$8.63 \times 8 \text{ OT} = \$ \underline{34.52}$$

$$\$448.60$$

Computation under Title 5:

$$\begin{aligned} \$7.96 \times 40 &= \$318.40 \\ \$11.94 \times 8 &= 95.52 \text{ Overtime} \\ .80 \times 40 &= + \underline{32.00} \text{ COLA} \end{aligned}$$

$$\$445.92$$

Since the computation under FLSA exceeds the computation under Title 5, the employee cannot be granted compensatory time. The employee must be paid.

(3) Compensatory time off may only be granted for irregular or occasional overtime work.

(4) A nonexempt employee whose basic rate of pay does not exceed step 1, GS-10, may make a written request for compensatory time off instead of overtime pay. This request must be made by the end of the pay period in which the overtime work is performed.

(5) Sample request for compensatory time off.

"I (signature of applicant), request compensatory time off in lieu of overtime pay for overtime work which I performed during the pay period ending _____, 19____.

Total overtime hours worked:_____.

Total compensatory time off requested:_____.

Date:_____.

Approved by:_____.

(6-20-84) PN 933

(6) The supervisor who approves leave also approves employee requests for compensatory time off. Retain the request in the reporting office with Form AD-321-3. Record on the T&A Report compensatory time earned in lieu of overtime to transaction code 32. For compensatory time used record to transaction code 64.

(7) An FLSA exempt employee whose basic rate of pay exceeds the maximum rate for GS-10 may be required to take compensatory time off instead of receiving overtime payment.

(8) Employees must take compensatory time before they take annual leave unless taking compensatory time would result in forfeiture of annual leave.

(9) If an employee has not used all earned compensatory time off before separation or transfer from FmHA, or by the end of the leave year, the employee will be paid the overtime rate of Pay that applied at the time the overtime was worked.

(10) Employees may not take compensatory time for holiday work.

§2051.363 Crediting fractional hours of work. (Added 11-13-85, PN 985.)

The following rules apply under both Title 5 and the FLSA:

(a) Overtime may be approved in increments of no less than a quarter of an hour.

(b) There are instances when management cannot or does not fully control the work situation and permits employees to work overtime in smaller fractions than a quarter hour. In these instances, the time will be credited and recorded under the daily practice of "rounding up" or "rounding down." The minutes shall be rounded to the nearest quarter hour on a daily basis as follows:

(1) If the minutes total 7 or less, then the total shall be rounded down to the preceding quarter hour. EXAMPLE: An employee works 35 minutes of overtime. Only 30 minutes of overtime would be recorded on the T&A Report. If the employee worked only 5 minutes of overtime for the day, no overtime would be reported on the T&A Report.

(2) If the minutes total 8 or more, then the total shall be rounded up to the next quarter hour. EXAMPLE: An employee works 9 minutes of overtime for the day. Fifteen minutes of overtime would be recorded on the T&A Report in this situation.

§§2051.364 - 2051.369 [Reserved]

§2051.370 Overtime provisions of the Fair Labor Standards Act (FLSA).

This section contains the instructions for administering the overtime provisions of the FLSA by FmHA. Further instructions are contained in chapter 551 of the Federal Personnel Manual (FPM) and Department Personnel Manual (DPM).

(a) Definitions.

(1) Suffered or Permitted. Work performed by an employee for the benefit of FmHA, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.

(2) Authorized travel. Travel directed or controlled by a responsible official of FmHA for the benefit of the Agency.

(3) Official Duty Station (ODS). The corporate limits of the city or town in which an employee is permanently assigned, as specified in Block 45 of Form AD-350A, "Notification of Personnel Action," and Block 18 of Form AD-332, "Position Description." Travel "within the official duty station" includes both travel within the corporate limits and/or travel within the specified radius of the actual duty station.

NOTE: Travel regulations in FmHA are contained in RD Instruction 2036-A. The travel radius is 50 miles from the duty station. With documented justification, the travel radius may be set at a radius of 30 miles up to 50 miles. The radius used in determining eligibility for overtime travel must be the same as that used for per diem expenses.

(4) Temporary Duty Station (TDS). A duty location to which an employee is temporarily assigned outside the ODS. The boundaries of a TDS are determined in the same way as the boundaries of the ODS and should normally coincide with the boundaries of the ODS of employees who are permanently stationed in that area.

(5) Job Site. A duty location within the limits of the ODS, or within the limits of the TDS when the employee is on a temporary assignment.

(6) Regular Working Hours. Hours of an employee's workday, scheduled in advance to cover a period of not less than one workweek during which the employee is expected to be on duty regularly. For purposes of the FLSA for determining corresponding work hours of an intermittent employee, use the "regular working hours" of those full-time employees at the employee's ODS.

(7) Corresponding hours. Hours on nonworkdays which correspond to the employee's regular working hours.

EXAMPLE: An employee is scheduled to work 8:00 a.m. to 4:30 p.m., Monday through Friday. The employee's corresponding hours are 8:00 a.m. to 4:30 p.m. on Saturday, Sunday, and holidays. An intermittent employee's corresponding hours normally should be considered the same as those of the full-time employees at the employee's ODS.

(8) Normal waiting time which interrupts travel. Waiting time involved when an employee is required by common carrier rules to arrive at a terminal at a designated predeparture time, (e.g., 30 minutes to 1 hour prior to scheduled departure time), or when an employee has to wait for a connecting flight to continue to a temporary duty station.

(b) FLSA overtime entitlement. The FLSA overtime provisions simply provide that an employee shall receive one and one half times his/her hourly rate of basic pay for all overtime hours of work over 40 in a workweek. Since Title 5 generally provides 1-1/2 overtime compensation, payment under Title 5 usually satisfies the requirements of the FLSA. The purpose of this section is to provide instructions for crediting hours of work under the FLSA so that in those situations when Title 5 payment is not in compliance with FLSA, an employee is credited with the proper overtime payment under the FLSA.

(c) Exemption from the FLSA overtime provisions. Under the FLSA professional, administrative, and executive personnel are "exempt" from the FLSA overtime provisions. Exempt employees are compensated for overtime work solely under Title 5. All FmHA positions must be evaluated to determine the appropriate FLSA designation. Each position description must be properly designated as exempt or nonexempt on block 4 on Form AD 332. Employees who are "nonexempt" are subject to the overtime provisions of the FLSA and Title 5.

(d) Criteria for determining exemptions from coverage under FLSA. All Federal employees, including temporary or intermittent employees, are subject to the minimum wage and overtime provisions of the FLSA unless they are determined to be exempt under the exemption criteria established under the Act. Although it is the employee who is or is not exempt, the exemptions are based on the nature of the work performed, the level of responsibility and the independence of action for executive, administrative and professional exemptions. (See Exhibit B).

(e) Crediting of hours of work under the FLSA. The automated payroll system of the NFC is programmed to compare an employee's overtime entitlement under Title 5 and the FLSA and pay under whichever provides the

greater benefit. In order for this system to function properly, however, it is essential that all Title 5 and FLSA overtime be coded properly on the T&A Report. The following procedures will ensure proper crediting of overtime work:

- (1) Use the proper Title 5 transaction code for all hours of work which are compensable under Title 5 and the FLSA (Codes 01, 19, 21, 25, 26, 81);
- (2) Use code 23 for any time which is compensable under FLSA only;
- (3) Use code 24 for travel which is compensable under Title 5 only (See §2051.361 (b) of this subpart);
- (4) Use code 30 for overtime "call back" when no work is performed, a situation which is compensable under Title 5 only.

(f) Hours of work under the FLSA.

(1) Basic principle. The key to determining the proper FLSA overtime entitlement is to determine accurately the number of "hours of work" under FLSA rules. Generally, FLSA counts as hours of work all time spent by an employee performing an activity for the benefit of FmHA and under the control or direction of FmHA. This includes all time during which an employee is required to be on duty, but does not include any leave or excused absence from duty. Time spent traveling is subject to the special rules contained in §2051.370(h) of this subpart.

(2) Basic working time. All time an employee actually spends on duty during regular working hours is compensable under FLSA. This time is compensable under Title 5 as well, and the 01 transaction code will properly credit this time under both laws.

EXAMPLE: John Doe, a GS-475-7 Assistant County Supervisor in Illinois, works a normal 40-hour workweek. The 40 hours are coded "01."

Title 5 Entitlement - 40 hours of basic pay.

Additional FLSA Entitlement - None, employee has not worked overtime.

(3) Officially ordered or approved overtime or Holiday work. All time an employee spends actually performing officially ordered or approved overtime work or Holiday work is compensable under FLSA.

This time is compensable under Title 5 as well, and the appropriate Title 5 overtime code will properly credit this time under both laws.

EXAMPLE: John Doe performs 8 hours of officially ordered or approved overtime on Saturday, in addition to his normal 40-hour workweek. The overtime hours are coded 21.

Title 5 Entitlement - 8 hours of overtime pay.

Additional FLSA Entitlement - None, Title 5 overtime pay satisfies FLSA requirement.

(4) FLSA travel. All authorized travel which meets the FLSA travel rules must be counted as hours of work. The FLSA travel rules are complex and this is the most difficult determination necessary under FLSA. Detailed instructions for applying the FLSA travel rules are contained in §2051.370(h) of this subpart. FLSA travel time is compensable under FLSA only and must be coded using code "23."

EXAMPLE: John Doe performs 4 hours of FLSA travel on Saturday in addition to his 40 hour regular workweek. The 40 hours of regular work are coded 01. The 4 hours of FLSA travel are coded under 23.

Title 5 Entitlement - 40 hours of basic pay.

Additional FLSA Entitlement - 4 hours of overtime pay.

(5) Training time under FLSA. Under certain conditions training time is compensable under the FLSA, even though overtime payment is generally prohibited under Title 5. The FLSA rules for determining compensable training time are contained in §2051.370(i) of this subpart. When training time outside regular working hours is compensable under these criteria, it shall be credited with transaction code 23.

EXAMPLE: John Doe attends a required training class in the evening for 2 hours each night from Monday through Friday, in addition to his 40-hour regular workweek. The 40 hours of regular work are coded as 01. The 10 hours of training time are coded under Transaction Code 23.

Title 5 Entitlement - 40 hours of basic pay.

Additional FLSA Entitlement - 10 hours of overtime for compensable training.

(6) Leave under FLSA. Under FLSA only actual working time counts as hours of work. Therefore, all leave time is excluded from hours of work. This includes any "administrative leave" or excused absences.

EXAMPLE: John Doe performs 4 hours of FLSA travel on Saturday. Mr. Doe takes 8 hours of sick leave on Monday and works 32 hours during the basic workweek.

Title 5 Entitlement - 40 hours of basic pay.

Additional FLSA Entitlement - None. Mr. Doe does 32 hours of work during the basic workweek and 4 hours of travel on Saturday. Therefore, he only has 36 hours of work under FLSA.

NOTE: FLSA Travel time must be coded under Transaction Code "23" regardless of whether the employee will receive FLSA overtime or not.

(g) Suffered or permitted work under the FLSA. The FLSA requires that any time which a manager supervisor suffers or permits an employee to perform work must be counted as "hours of work." Under this concept any work performed prior to, or after, the normal work hours or during the prescribed lunch period, whether requested or not, is working time if the manager or supervisor knows or has reason to believe it is being performed or accepts the work or product of the work performed. Managers and supervisors cannot accept the benefits of a nonexempt employee's work without compensating the employee for that work. Consequently, supervisors and managers should exercise appropriate controls to ensure that no overtime work is suffered or permitted which has not been approved under the procedures contained in §2051.360 (b) of this subpart. If a manager or supervisor must allow any suffered or permitted overtime, the time must be recorded using transaction code 23. However, this situation should not occur frequently if the supervisor/manager exercises proper controls. Managers and supervisors should clearly indicate to an employee when work is requested outside of regular work hours and when it is not.

(h) Travel provisions of the FLSA.

(1) Basic principle.

(i) Most time which is considered working time under the FLSA is also work under Title 5. The most important exception to this general rule involves travel time. The FLSA rules for travel are different from those of Title 5. Therefore, knowledge of FLSA travel rules is the single most important

factor in ensuring the proper crediting of hours of work under the FLSA. While the specific application of the FLSA rules to some situations can be complex, the rules themselves are fairly simple. Exhibit A contains tables for applying these rules to the most common travel situations in FmHA. The principles outlined in this section should be kept in mind when using these tables.

(ii) It is important to note that some of the forms of travel which are compensable under the FLSA are also compensable under Title 5. In this situation, as in any other situation when time is compensable under both laws, it must be coded under the appropriate Title 5 transaction code.

(iii) When travel time is compensable under the FLSA only, it must always be coded using transaction code 23, even if the employee has no FLSA overtime entitlement in that workweek.

(2) FLSA travel rules. The tables in Exhibit A address the most common travel situations encountered under the FLSA. An understanding of the following principles will explain the results achieved by following the tables:

(i) Home-to-work travel. The normal home-to-work travel of an employee is not compensable under the FLSA. NOTE: The term "home-to-work" travel also includes work-to-home travel. When an employee travels directly from home to a temporary duty station, the time the employee would have spent traveling to his normal duty station is deducted from any compensable FLSA travel time. This deduction of normal home-to-work travel is not appropriate when an employee travels during regular working hours or corresponding hours.

(ii) Travel during regular working hours. Basically, all authorized travel performed during regular working hours is compensable under both Title 5 and the FLSA. Code all such time under the appropriate Title 5 transaction code. Be sure to deduct all actual meal periods.

(iii) Travel which extends the workday. Travel which occurs before or after regular working hours, which is directly associated with a given job assignment, is considered an extension of the workday and is counted as hours of work. Of course, the trip from home to the first job site within the ODS and the trip back home from the last job site within the ODS are normal home to work travel. Code this under the appropriate Title 5 transaction code.

(iv) Work performed while traveling. Actual work performed while traveling is counted as hours of work under both laws. Code such time under the appropriate Title 5 code. In addition, time that an employee is required to drive a vehicle is counted as working time under the FLSA only. This time is recorded under code 23.

NOTE: Normal home-to-work travel is deducted from compensable driving time in some situations. See Exhibit A for details.

(v) Travel on a 1-day assignment. When an employee is required to travel to a temporary duty location outside the ODS and to return on the same day, the travel is compensable under the FLSA. Such travel is considered part of the workday and is recorded under code 23. Home-to-work travel is deducted when the employee travels directly from home to the temporary duty location. Actual predeparture waiting time at a common carrier terminal is counted as hours of work. However, the waiting time credited may not exceed 1 hour. Waiting time which occurs when the employee's travel is interrupted, i.e., waiting for a connecting flight at the common carrier to continue traveling is also credited as working time. (Revised 11-13-85, PN 985.)

(vi) Travel as a passenger on an overnight assignment. When an employee travels as a passenger on an overnight assignment away from the ODS, only the travel which occurs during regular work hours or corresponding hours on nonworkdays is compensable. This time is recorded under code 23. Actual predeparture waiting time at a common carrier terminal is counted as hours of work. However, the waiting time credited may not exceed 1 hour. Waiting time which occurs when the employee's travel is interrupted is also credited as working time if it occurs during regular work hours or during corresponding hours on nonworkdays. (Revised 11-13-85, PN 985.)

(3) Special Situations.

(i) Alternative Means of Travel. When an employee is permitted to choose alternative forms of transportation, the employee is entitled to the lesser of:

- the actual travel time which is compensable under the FLSA;
or
- The estimated travel time which could have been compensable under the FLSA if the employee had traveled by another form of transportation offered by FmHA.

(ii) Alternative time of travel. Officials ordering travel are responsible for specifying, within reasonable limits, the time when authorized travel will be performed by employees. When an employee for personal reasons travels at a time other than that selected by the supervisor or, for personal convenience, travels by an indirect route or interrupts the trip, the employee will be credited with the lesser of:

- the actual travel time which is compensable under the FLSA;
or

- the estimated travel time which could have been compensable under the FLSA if the employee had traveled at the time selected by the supervisor.

(iii) Travel involving two or more time zones. When an employee's travel involves two or more time zones, the time zone at the point of first departure for the workday shall be used to determine whether travel occurs during regular working hours or corresponding hours. For example, if an employee commences travel on Monday in Washington, D.C. with a short stopover in Denver, Colorado, and then travels to Los Angeles later the same day, the Eastern time zone is used to determine whether the travel was performed during regular working hours. Conversely, if the same employee later returns from Los Angeles to Washington, D.C. on Saturday (a nonworkday), the Pacific Time Zone is used to determine the hours which correspond to regular working hours.

(4) Responsibilities.

(i) Each supervisor must:

- (A) Make sure that each employee under his/her supervision (including acting or temporary assignments) is paid any compensation for which he/she is entitled under provisions of the FLSA and as outlined in this subpart.

- (B) Make sure that each employee covered by this law submits, upon return from travel, Form RD 2051-5, "Record of FLSA Travel Time."

- (C) Review Form RD 2051-5 and determine what portion, if any, is considered work time and assure that it is recorded properly on the AD-321-3.

(ii) Each nonexempt FLSA employee must:

(A) Report immediately to his/her supervisor (including acting or temporary) any time worked outside the regularly scheduled tour of duty.

(B) On return from travel, complete and submit Form RD 2051-5 to his/her supervisor for review and determination of travel time which is considered work time.

(i) Compensable training time. The time spent in training, or in preparation of training, outside regular working hours is considered compensable as "hours of work" under the FLSA if the following criteria are met:

(1) The employee is "directed" to participate in a training session by FmHA. "Directed" means that these sessions or meetings are primarily for the benefit of the Agency and the employee is required to attend.

(2) The purpose of the training is to bring an employee's performance up to an acceptable level or to maintain the employee's performance at an acceptable level in his or her position. (Revised 11-13-85, PN 985.)

NOTE: Training to maintain the employee's level of performance in his or her current position is distinguished from upward mobility training, or developmental training, to provide an employee the knowledge of skills needed for a subsequent position in the same career field. This type of training outside regular working hours is not compensable.

(3) Time spent by an employee performing work for the Agency during a period of training shall be considered "hours of work".

(4) Time spent by an employee within an approved allowance of preparatory time for attendance at training shall be considered "hours of work" if such preparatory time is: (Revised 11-13-85, PN 985.)

(i) during an employee's regular working hours, or

(ii) outside the employee's regular working hours and the purpose of the training meets the requirements specified in paragraphs (1) and (2) above.

NOTE: The supervisor must determine the allowance for time needed to prepare for training (Pework), if any, on an individual course requirement basis at the time an employee is authorized to participate in a particular training course.

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(5) Time spent attending a lecture, meeting, or conference shall be considered as "hours of work" if:

(i) attendance is during the employee's regular working hours;
or

(ii) attendance is outside an employee's regular working hours and the employee is directed by the Agency to attend; or

(iii) the employee is directed to perform work for the benefit of the Agency during such attendance.

(6) Time spent receiving medical attention. Time spent waiting for and receiving medical attention for illness or injury shall be considered hours of work if:

(i) the medical attention is required on a workday an employee reported for duty and subsequently became ill or was injured;
and

(ii) the time spent receiving medical attention occurs during the employee's regular working hours; and

(iii) the employee receives the medical attention on the Agency's premises, or at the direction of the Agency at a medical facility away from the Agency's premises.

(7) Time spent taking a physical examination that is required for the employee's continued employment with the Agency is considered hours of work.

§§2051.371 - 2051.400 [Reserved]

Attachments: Exhibits A and B

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Guide for Using the Attached Tables

1. The following tables are to be used to help determine when travel time is to be credited as hours of work under the FLSA. See §2051.370 (h) of this Instruction for an explanation of FLSA travel rules.
2. The tables do not address all possible travel situations during regular working hours. This is because authorized travel during regular working hours is always compensable except for actual meal periods. Actual meal periods are also deducted from compensable travel time which occurs outside regular working hours.
3. Remember that the term "home-to-work travel" also includes travel from work to home. In many instances the tables only address the actual home-to-work situation, but the same principles apply to the work-to-home situation.
4. Guide for choosing the proper Table.
 - A. Use Table I when an employee goes to work within the limits of the Official Duty Station (ODS).
 - B. Use Table II when an employee is required to travel outside the limits of the ODS.
 - C. Use Table III when an employee travels away from the ODS on an overnight assignment.
 - D. Use Table IV when an employee spends time in training outside regular working hours.

Exh A, Table I, II and III not automated see manual

CIRCUMSTANCES WHEN TIME SPENT OUTSIDE REGULAR WORKING HOURS FOR TRAINING IS CONSIDERED "HOURS OF WORK" UNDER FLSA <u>1/</u>		
	Time Spent in Training	Time Spent In Preparation for Training
Training to bring an employee's performance up to an acceptable level in his or her current position.	YES	YES <u>2/</u>
Training to provide an employee the knowledge and/or skills to perform new duties or responsibilities required in his or her current position.	YES	YES <u>2/</u>
Training to improve an employee's performance above an acceptable level in his or her current position. <u>3/</u>	NO	NO
Training to provide an employee additional knowledge or skills for reassignment to another position or advancement to a higher grade.	NO	NO
Training in an apprenticeship program, an internship program, or training under the Veterans Readjustment Act. <u>4/</u>	NO	NO
<u>1/</u> Time spent in training or in preparation for training during working hours is hours of work, unless the employee is on paid leave or leave without pay. <u>2/</u> Time actually spent by an employee within the approved allowance for preparatory time is hours of work. Any additional time spent by an employee in preparing for training is not hours of work. <u>3/</u> Such training must be undertaken with the knowledge that the employee's performance or continued retention in his or her current position will not be adversely affected by nonenrollment in the training program. <u>4/</u> Any period of work productivity to FmHA during such training will be considered hours of work.		

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Exhs B & C not automated see manual